SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
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COORDINATION PROCEEDING SPECIAL TITLE (Rule 1550 (b)) In re TOBACCO CASES II This document relates to: The People of the State of California, et al. v. Philip Morris Incorporated, et al., Los Angeles Superior Court Case No. BC 194217; The People of the State of California, et al., v. General Cigar Co., et al., San Francisco Superior Court Case No. 996780; The People of the State of California, et al., v. Brown & Williamson Tobacco Corp., et al., San Francisco Superior Court Case No. 996781; The People of the State of California, et al. v. Tobacco Exporters, et al., San Francisco Superior Court Case No. 301631.	JCCP No. 4042

DEPOSITION OF
HARRIET CHARNEY

June 8, 2000

REPORTED BY: CLARE MACY, CSR 5256

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BE IT REMEMBERED that, pursuant to Subpoena and on Thursday, June 8, 2000, commencing at 1:52 p.m. thereof, at 1111 Broadway, Suite 1500, Oakland, California, before me, CLARE MACY, a Certified Shorthand Reporter, personally appeared

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HARRIET CHARNEY

called as a witness by Defendant, who, having been duly sworn, was examined and testified as follows:

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P R O C E E D I N G S

EXAMINATION BY MR. LERNER

MR. LERNER: Q. Could you please state your full name.

A. Harriet Charney.

Q. Can you tell me your business address, please?

A. 424 Pendleton Way, Oakland, 94621.

Q. And is that -- do you physically work at that address?

A. I do indeed.

Q. Ms. Charney, have you had your deposition taken before?

A. No.

Q. Have you had a chance to discuss with Mr. Sipos the rules that govern a deposition?

A. Yes, I have.

Q. I will review them briefly so that we make sure that you understand the same ground rules.

You're under oath today as though you were testifying in a court room. Your obligation is to testify as to what you know, but not to speculate or guess as to anything you don't.

If you can't remember something exactly, my request would be that you tell me what you do remember. And if you are giving me an estimate rather than precise information, you can make that clear. Don't speculate or guess. Is that understood?

A. Understood.

Q. When the deposition is completed, the court reporter will transcribe the questions and answers into a booklet. You'll have an opportunity to read and

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review the booklet and make any changes that you think are appropriate and correct errors that conform to your recollection or otherwise change your testimony. If you do make any changes to the transcript, however, attorneys at the time of trial would have a chance to comment on those changes in a court room. Do you understand that?

A. I do.

Q. If you don't understand one of my questions,

my request to you is that you not answer it but tell me that you don't understand it, and I'll try to rephrase it so that you do.

As you know, I probably know less about your business than you do. And the questions I ask may not be meaningful in respects -- in various respects to you. And if the questions are not meaningful or otherwise don't make any sense, will you tell me that, and I'll rephrase them.

A. I will.

Q. And a couple of practical issues. You must answer audibly so the court reporter can take it down. Do you understand that?

A. I do.

Q. And also, we should not talk at the same time. That's a tendency that people have in regular conversation, but it makes it very difficult for the court reporter. Do you understand that, too?

A. I do. Richard and I already discussed that.

Q. Fabulous.

And I'll try to refrain from talking over your answers, which is sometimes hard.

(Whereupon, Defendant's Exhibit 390 was marked for identification.)

MR. LERNER: Q. We've marked as Exhibit 390 a copy of the Defendants' Amended Notice of Taking Deposition of Person(s) Most Knowledgeable at the American Lung Association. And in particular, that

would be the American Lung Association of California. This particular notice is for you personally because you were identified to us as one -- by your attorneys as one of the persons most knowledgeable for the American Lung Association.

Have you seen the attachment 3 to this deposition notice before, which identifies the topics for which testimony was requested?

A. Yes, I have.

Q. And the first topic pertains to goals of the American Lung Association of California to inform, warn and/or educate any and all residents to the dangers of exposure to secondhand smoke or environmental tobacco smoke from 1991 through the present. Do you have personal knowledge on that subject?

A. Yes, I do.

Q. And for purposes of today's deposition, I'll be using occasionally the abbreviation ETS to refer to environmental tobacco smoke. Is that all right?

A. That's absolutely acceptable.

Q. Now, do you also have information, personal knowledge, concerning the second topic, which is any and all methods utilized to achieve the goals of American Lung Association of California to inform, warn and/or

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educate any and all residents of the dangers of exposure to secondhand smoke or environmental tobacco smoke from 1991 through the present, including its coordination with the California Department of Health Services and

Proposition 99 grantees?

A. Yes, I do.

Q. And then the third topic is any and all evaluations and/or surveys performed to determine or estimate the effectiveness of any and all efforts by the American Lung Association of California to inform, warn and/or educate any and all residents of the dangers of exposure to secondhand smoke or environmental tobacco smoke from 1991 through the present. Do you have information, personal knowledge, concerning the third topic I just read to you?

A. Yes, I do.

Q. Okay. Let me just go back through your background, and then I'll understand the basis for your knowledge.

Can you tell me what your educational background is, please? Just your college education and degrees, areas of professional expertise.

A. I have a Bachelor's of Arts degree in psychology from Vassar College. I have a Master's in public health from the University of California at Berkeley.

Q. And have you worked professionally in the public health field?

A. Yes, I have.

Q. What was your first position after you received your -- well, I should take that back. Did you receive -- did you have any employment in the public

health field prior to the time you received your Master's of public health?

A. No.

Q. What was your first position after you received your -- your first position of employment after you received your Master's of public health?

A. I worked for the Headstart program in Alameda, the City of Alameda.

Q. What were the inclusive dates of your employment at Headstart?

A. I wish I had brought my resume with me.

1976 to 1978.

Q. Did any work that you did at Headstart pertain to smoking or tobacco -- sorry, to tobacco control?

A. No.

Q. When you were obtaining your Master's in public health at U.C. Berkeley, did you study any topics that pertained to tobacco control?

A. It was a long time ago. However, we did study public health issues and health conditions, health -- so I would say yes in relation to chronic disease. The relationship between smoking and chronic disease was certainly mentioned in my classes.

Q. So it was an area that you had at least some training at the time of your Master's degree, obtaining it?

A. Yes.

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Q. Did any of that training pertaining to tobacco control issues come into play during your employment with Headstart?
A. Not with Headstart.
Q. What was your next position after Headstart?
A. After Headstart I worked for a small HMO called Rockridge Health Care Plan, which became Health America, which became Maxi Care. This is in the course of nine years that I worked there. And then --
Q. Health America, was it?
A. Yes. And then became Maxi Care. And then went bankrupt.
Q. What were the inclusive dates of your employment there?
A. 1978 to 1987.
Q. Go off the record a second.
(Discussion off the record)
MR. LERNER: Back on the record.
Q. What was your first position with the HMO?
A. Nutrition and health education.
Q. And what was your title, your job title?
A. Director of nutrition and health education. And subsequently, I also became the director of the WIC program.
Q. Could you spell that?
A. W-I-C, which is an abbreviation for Women, Infant and Children. It's a federally funded food voucher program for pregnant women and children from

infancy through five.
Q. Did your duties as director of the WIC program, were those in addition to your duties as director of nutrition and health education?
A. Yes. They were all simultaneous.
Q. During what period of time were you director of nutrition and health education?
A. For the duration of the time that I was there.
Q. For the entire period of time?
A. Yes, yes.
Q. During what period of time were you the director of the WIC program?
A. 1980 to '84 or '85. '85.
Q. Did you hold any other positions with the HMO, that is, other than director of nutrition and health education and director of the WIC program?
A. No, I did not.
Q. Did any of your work in those positions pertain to tobacco control matters?
A. Yes.
Q. What work did you do that pertained to tobacco control matters?
A. I did counseling with patients regarding their use of tobacco and smoking cessation. In my work with WIC participants, I provided education related to environmental tobacco smoke and exposure with pregnant women and infants. And I did provider education.

Q. What is meant by the term "provider education"?
A. Oh, it goes both ways. Provider education is education to the physicians, nurse practitioners and allied health professionals regarding smoking cessation

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techniques, strategies. There's a lot of evidence that suggests that having your physician tell you how important it is to stop smoking is probably one of the most effective tools for getting people to at least think about it, if not actually act on it.

Q. Did any of your tobacco control work with the HMO pertain to ETS?

A. Not specifically to ETS.

Q. Did the work pertain entirely to the smoking cessation?

A. Primarily to smoking cessation, though as I mentioned earlier, with the WIC program, some of the issues did relate to exposure to infants in utero and to young children in the home.

Q. So to that extent, there was some work that involved --

A. Yes.

Q. -- ETS issues?

A. Yes.

Q. What was your next position of employment after you left the HMO?

A. After I left the HMO, I worked for a year and a half assisting my husband in setting up his medical

practice in Alameda. So my official title was probably office manager, as well as nutrition consultant, health educator and Jack or Jill of all trades. Billing. I learned a great deal. And our marriage survived.

Q. Remarkable, actually.

A. Truly.

Q. Now, did any of your work in that position pertain to ETS?

A. No.

Q. Other than making sure the office was smoke-free?

A. Yes.

I want to say it was the law then, but I'm actually not 100 percent sure if that was the case.

Q. What was your next position after that?

A. I worked for Kaiser Permanente Medical Group.

Q. What were the inclusive dates of your employment there?

A. '89 through '95. '89 through -- yes, '95.

Q. What position did you -- Did you hold more than one position at Kaiser Permanente?

A. Senior health educator.

Q. Was that position the one you held the whole time you were at Kaiser?

A. Yes.

Q. Was that your title?

A. Yes.

Q. What were your duties as senior health

educator?

A. I was responsible for the development, implementation and evaluation of health education programs for women and children, maternal and child health.

Q. Which Kaiser were you employee of?

A. Hayward.

Q. So you were employed by the medical group?

A. Yes.

Q. And not by the hospital?

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A. Right.
Q. Okay.
Were you in a particular department?
A. Health education.
Q. Did you do any work that pertained to environmental tobacco smoke at Kaiser Permanente?
A. Only very minimally. Again, in the context of prenatal education and pediatric exposure to children with asthma or other respiratory disease.
Q. What specifically was your work in that context? Let's take it first in the context of prenatal education.
A. I was responsible for the coordination of prenatal education group programs, which focused on a variety of topics, and in early pregnancy, included nutrition, health and lifestyle behaviors that are important in insuring a healthy baby. We instituted a smoking cessation program for pregnant women because we

determined that they were not comfortable in regular programs and smoking clinics that we did, and that the need or the urgency for them in terms of stopping smoking was such that they -- the scheduling didn't always work for our regular smoking cessation program. So we instituted a telephone counseling service, smoking cessation by telephone counseling for pregnant women.
Q. How did the counseling for pregnant women involve education related to ETS?
A. As a motivational factor primarily.
Q. So how was this information presented in the program?
A. The risks of -- Women were educated about the risks of smoking when they were pregnant and exposure to their infant.
Q. And this was done by telephone counseling?
A. Some of that education did occur in the group program in early pregnancy.
Q. So it occurred -- I want to make this clear on the record. The counseling that pertained to --
A. To the risks.
Q. -- to the risks of ETS to infants occurred by telephone counseling?
A. No.
Q. That would occur --
A. That occurred in a group session.
Q. That was a group session for expectant mothers?

A. Indeed.
Q. And you mentioned there was also -- well, let me go back to that.
And did all expectant mothers receive this group education?
A. It was voluntary, so those who chose to attend attended. It was not required.
Q. Was there any information pertaining to ETS that was given out in pamphlets or brochures to expectant mothers?
A. I expect, but I cannot say for certain, that that is the case.
Q. Now, with regard to the pediatric education with respect to ETS exposure affecting children with asthma and other respiratory diseases, what was done by

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way of prenatal education in that category?
A. That is not --
Q. I'm sorry. What was done by way of education in that category?
A. We developed a health education program for the parents of children with asthma.
Q. What was the nature of that program generally?
A. And the nature of that program was to educate people about asthma and give them skills, tools for asthma management, self management for their children. And that would include exposure to environmental tobacco smoke if that were an identified trigger.

Q. Are you saying the program did involve information concerning exposure to ETS?
A. Uh-huh, yes.
Q. How was that information concerning the health risks of ETS imparted in that health education program?
MR. SIPOS: Hank, aren't we getting a little far afield? You can ask the witness some background questions, but we're here for a person most knowledgeable about the American Lung Association. And you're asking about a hospital's policies, procedures, training on ETS. I mean, how does that relate to the topics in the subpoena?
MR. LERNER: Well, I think I could link it up, but I'll go there more directly if that would be more convenient for everyone.
Q. When did you leave Kaiser Permanente?
A. 1995.
Q. And when did you -- what was your next position?
A. I worked for the Contra Costa County Breast Cancer Partnership.
Q. What were your dates there?
A. 1995 to 1997.
Q. Did any of your work there pertain to health risks of ETS?
A. No, not at all.
Q. What was your next position after that?

A. I joined the American Lung Association on July 1st, 1997.
Q. Are you still employed by the American Lung Association?
A. I am indeed.
Q. When you say the American Lung Association, do you mean the American Lung Association of California?
A. Yes, I do.
Q. Before you joined American Lung Association, were you familiar with that organization?
A. Yes, I was.
Q. Had you worked with them before?
A. I had not worked directly with the American Lung Association; however, in my employment at Kaiser, one of my colleagues worked directly with the American Lung Association because we utilized the American Lung Association's Freedom from Smoking program.
Q. And does the American Lung Association still have the Freedom from Smoking program?
A. Yes, it does.

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Q. Was there any aspect of the Freedom from Smoking program that pertains to the health risks of ETS?

A. The Freedom from Smoking program is a smoking cessation program providing people with tools, motivation to quit smoking. In the first session, there is some brief overview of the health risks associated with smoking and with environmental tobacco smoke, but

it's a multi-session program focusing specifically on techniques to quit smoking.

Q. So the introductory session contains information that informs smokers that ETS is a danger to other persons?

A. Yes, yes.

MS. FROSTROM: Objection. Misstates testimony.

MR. SIPOS: You can --

MR. LERNER: Let me just add a further ground rule. If there's an objection to a question today -- the objections generally go to the form of the question. If there's an objection to the form of the question, it's stated for the record so that the trial judge can rule on it at the time of trial. However, your obligation is nonetheless to go forward and answer the question.

Now, some objections may inspire me to rephrase my questions because they might be lousy questions. If I do that, we'll do it over again. That question I thought was okay. So we'll just go from there. If Mr. Sipos instructs you not to answer the question because it seeks information that may be privileged or some other basis he decides you shouldn't answer it, then that's a different matter. Okay?

THE WITNESS: I understand.

MR. LERNER: Q. Did the Freedom from Smoking program contain this advice, that is, this introductory

advice about the dangers of ETS, at the time that you were at Kaiser Permanente?

A. I think, as I said earlier, I was not directly involved in the implementation of the Freedom from Smoking program. However, the health risks associated with smoking, including environmental tobacco smoke, have been an integral part of the Freedom from Smoking program.

Q. When you joined the American Lung Association, what position did you have?

A. I'm the director of program services.

Q. Is that the -- that's the position you've held for the whole time you've been at American Lung Association?

A. Yes.

Q. And what are your duties as director of program services?

A. I'm responsible for the coordination of core programs for providing training and technical assistance and for the development and implementation of education for staff and volunteers of the Lung Association.

Q. What do you -- I take it there's three separate functions then. The first function is -- if I understand you correctly, is coordination of core programs?

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A. Yes, that's correct.
Q. What is meant by core programs?
A. The American Lung Association is a national

association, and our national American Lung Association has identified three core program areas.
Q. What are they, please?
A. The core program areas are tobacco control, asthma and environmental health.
Q. Do you mean by core areas programs, or do you mean policies or what?
A. I'm referring specifically to programs, which is my responsibility.
Q. Are there programs in the tobacco control area that pertain to ETS?
A. There are two core programs under tobacco control.
Q. What are those?
A. And they are the TATU program, T-A-T-U, which is the acronym for Teams Against Tobacco Use.
And the NOT program, Not on Tobacco, which is a teen smoking cessation program.
Q. Can you repeat what that program is about?
A. It's a teen smoking cessation program.
And the third area in that core program is advocacy, but that's not something that I am directly involved in.
Q. What does advocacy mean?
A. Policy, tobacco control policy.
So those are our three national priorities.
MR. SIPOS: Under tobacco control?
THE WITNESS: Under tobacco control.

MR. LERNER: Q. Maybe it would help to go through each of the three core programs and find out what they are about to understand this clearly.
A. Okay.
Q. So what are the programs in the area of tobacco -- asthma?
A. In the area of asthma, we have one core program, and that's Open Airways for Schools, which is abbreviated OAS. And it's a school-based program for children between 8 to 11 years old to teach them asthma self management skills.
Q. And then what other programs with regard to environmental health?
A. There is the Indoor Air Quality Tools For Schools program, IAQTFS, which is a joint program with E.P.A.
Q. That's the federal Environmental Protection Agency?
A. Yes.
And then, again, a core area that I am not directly involved in under environmental health is policy.
Q. You mentioned these programs are nationwide programs of the American Lung Association?
A. (Witness nods head.)
Q. And is there -- which of these programs, if I could ask you generally, pertains to smoke-free environments and ETS?

MS. FROSTROM: Objection, ambiguous.

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THE WITNESS: I would agree. I'm not sure what you mean by pertains to.
MR. LERNER: I'll strike it.
Q. With regard to the TATU program, is there an element of that program that involves education concerning health risks of ETS?
A. No.
Q. Is there any information in that program that relates to secondhand smoke?
A. As well as I can recollect, there is little or nothing in that program regarding ETS.
Q. Is there anything in the NOT program that concerns the health risks of ETS?
A. No, there is not. And it is primarily a program designed to assist teens to quit smoking. And we found that teens actually -- I shouldn't offer this, but I will. Teens are not particularly concerned with chronic health.
MR. SIPOS: I'm not surprised.
MR. LERNER: I'll accept that, based on my own experience. Of course, not my own personal experience, just my kids.
Q. You mentioned that you do not have responsibility for the advocacy part of the tobacco control?
A. (Witness nods head.)
Q. So with regard to the Open Airways for

Schools program, is there an element of that program that relates to the health risks of ETS?
A. There is an element of that program that relates specifically to ETS as a trigger for asthma exacerbation.
Q. What do you mean? You mean like an asthma attack?
A. That's correct. People in the medical profession resist now the use of the word "attack," though it is quite commonly used in the community. So in the medical setting, "exacerbation" or "flare" are the terms that are preferred.
Q. So there's a component of the program that teaches children age 8 to 11 to be aware of secondhand smoke?
A. Yes, indeed.
Q. We'll return to that later.
Now, with regard to the Indoor Air Quality Tools For Schools program, is there an element of that program that concerns the health risks of ETS?
A. No. That's a school-based program. It's referring to the air quality in schools.
MR. SIPOS: You answered the question. You said no.
THE WITNESS: I just wanted to say, you're not allowed to smoke in schools. It's a law.
MR. LERNER: Q. Just to return to your job description for a moment, what are your duties as

director of program services?
A. When there is a need for training, I am involved in the training of both staff and sometimes volunteers to implement these programs.
Q. Do you have any other duties as director of program services?

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A. I do.
Q. What would those be?
A. In addition to the coordinating of the core programs, I'm responsible for providing training and technical assistance in any of the program areas to our affiliates and branches.
Q. I apologize. I did ask you that.
And the training and technical assistance is for whom? Affiliates?
A. For both affiliates and branches.
Q. Does any of the work you do in training and technical assistance pertain to health risks of ETS?
A. As we just reviewed, in those programs where there's -- where there is a component of ETS, so when I have done training for Open Airways for Schools, that will be covered.
Q. Okay. And then you mentioned that you also have duties to implement -- or regarding the implementation of education for staff and volunteers?
A. Yes.
Q. And how does that differ from training -- I see. Training and technical assistance is for

affiliates and branches?
A. Yes.
Q. So the education training is for staff and volunteers as well?
A. (Witness nods head.)
And that's more broadly based. So for example, I'm responsible for an annual statewide conference.
Q. Of the American Lung Association?
A. Yes.
Q. Is that for the affiliates and branches?
A. Yes, and their volunteers.
Q. When did you assume responsibility for the annual statewide conference?
A. In 1997.
Q. And is it held the same time every year?
A. Uh-huh.
Q. When is that?
A. It's generally either in August or September.
Q. Is ETS a subject that since you have been with the American Lung Association has been brought up at the annual statewide conference?
A. There have been no workshops specifically related to ETS.
Q. Is there something that is generally related to ETS?
A. Invariably, we try to balance our workshops or sessions with topics that include tobacco control,

environmental health and asthma.
Q. And the workshops -- or have workshops on those topics to your knowledge included information concerning health risks of ETS?
A. Not in the three years that I have been with the Lung Association.
Q. If I could refer you to the first topic on the attachment to Exhibit 390, what is your understanding of the goals of the American Lung Association with regard to informing, warning or educating residents of the dangers of the exposure to

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ETS?
A. The goal of the Lung Association is to prevent lung disease and promote lung health. And as part of that mission, warning and educating the public about ETS is a small part.
Q. So there is -- a component of the overall goal is to warn the public about ETS?
A. Absolutely.
MS. FROSTROM: Objection, misstates testimony.
MR. LERNER: Q. And with regard to programs, what methods -- with reference to the second topic on the attachment to Exhibit 390, what methods are utilized in programs for which you are responsible to inform or educate residents of the dangers of secondhand smoke?
A. I'm hesitating because I'm in my mind thinking about the specific role of the American Lung

Association of California. And I think as I made clear from my discussion of my responsibilities, my primary customer are the affiliates, staff and volunteers of the Lung Association. So I can speak to some of the work that our local affiliates and branches do to achieve these goals. But I am not directly responsible for the most part for education to the public.
We do have -- we, being ALAC, in July of 1999 received a statewide Prop 99 grant administered through ALAC on educating key opinion leaders. And I am directly involved in the supervision of the program director for that project.
Q. What's the name of the project again?
A. Educating Key Opinion Leaders, and the acronym that we use is EKOL.
Q. Who is the director of that project?
A. Her name is Trish Gibson. Trisha Gibson.
Q. She reports to you?
A. Yes.
Q. So what is done under the EKOL project to inform or educate residents of the dangers of ETS?
A. This project is focused on key opinion leaders, and they are defined as elected officials, law enforcement, educators, business, the religious community, youth. We have -- the program has been -- the project has been in effect for one year. The goal of the first year has been to develop resource teams, 15 resource teams throughout the state. And those resource

teams are responsible for identifying the strategies and the focus of the work that they will do in their communities on tobacco control.
The overall goal of the project is to educate key opinion leaders about the value of norm change strategies in tobacco control.
Q. And how many persons are employed in the EKOL project that you direct?
A. We have the project director. We have a part-time policy staff person. In addition to myself, Paul Knepprath is also on the project. And our main subcontractor is Community Focus, which is a nonprofit based in San Francisco. And their role in this project has been to work with the resource teams on developing their strategies.
Q. Now, is there some list or database of key

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opinion leaders at whom the work of this project is directed?

A. Each of the resource teams has identified key opinion leaders.

Q. You mentioned the project focuses on elected officials?

A. Primarily on elected officials, but not only on elected officials.

Q. What categories of elected official does this project focus on?

A. Primarily local. The state elected official would be included as well. So that would be city,

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county.

Q. And state legislative people?

A. (Witness nods head.)

Q. Does it include members of the judiciary?

A. Not to my knowledge.

Q. Does it include -- You mentioned that there's also a category of law enforcement?

A. (Witness nods head.)

Q. What people are in that category?

A. That would include the police, the sheriff, sometimes the fire departments. It depends in various communities who is responsible for the enforcement of some of the smoke-free laws.

Q. And you mentioned educator as a category?

A. (Witness nods head.)

Q. Who is included within that category?

A. Yes. I'm so sorry. Yes. Educators.

Q. Thank you.

A. I am not certain who would be included, but I -- I'm not certain.

Q. Does it include school teachers?

A. I would think that it would.

Q. And administrators?

A. What I'd like to remind you is that the composition of the resource teams and who they target is determined locally.

Q. You mentioned that this EKOL project is based on a Prop 99 grant?

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A. Yes.

Q. What's the period of time over which the grant runs?

A. Three years.

Q. Beginning July '99?

A. Yes.

Q. And to your knowledge, is there a written contract?

A. There is indeed.

Q. And does the written contract contain information that describes the scope of the grant, purpose of the grant?

A. Yes, it does.

Q. Under the grant, as you understand it, whose responsibility is it to designate the key opinion leaders at whom the directed work is to be directed?

A. The resource team coordinators. And we have subcontracts with our local associations.

Q. That is with the affiliates?

A. Uh-huh. Who have identified the resource team coordinators.

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Q. Do you know, is there a target number of key opinion leaders at which this project is directed?
A. We have a number of parameters that we have developed as part of the grant. The first parameter, which actually relates to question No. 3, is a survey that we've just completed with 415 key opinion leaders throughout the State of California.

Q. What do you mean parameters?
A. Well, I don't have the grant in front of me, but I recall that we have set some guidelines for ourselves in terms of the number of key opinion leaders that we will reach, the number of presentations that each resource team will make to different groups of key opinion leaders. But without the grant in front of me, I can't tell you the exact numbers.
Q. So has an effort been made to identify -- strike that.
Is part of the program identifying a specific number of key opinion leaders that are to be communicated with within a certain period of time?
A. Yes.
Q. Do you happen to know what number of leaders that is?
A. I can't recall.
Q. Do you have an estimate?
A. I would not feel comfortable with an estimate. I would rather look at the grant.
Q. Sure.
You mentioned that key opinion leaders include members of the religious community?
A. Yes, that's right.
Q. What is meant by that?
A. Clergy.
Q. Religious school teachers as well?
A. I can't say for sure.

Q. Now, where are the 15 resource teams based?
A. In each of the Lung Associations in the State of California.
Q. So there's one at each of the 11 affiliates and one at each of the branch offices of the ALA of California?
A. Yes.
Q. And is there a coordinator for each of the resource teams?
A. Yes.
Q. What's the title of that person?
A. The resource team coordinator.
Q. Is the position of resource team coordinator a full-time position?
A. In most cases it is not. In any case, it is not. There's not enough money in the grant.
Q. So it's a part-time position?
A. That's correct.
Q. Do you receive reports from the resource team coordinator? By you I mean --
A. Trish Gibson.
Q. Does Trish Gibson receive reports?
A. Yes.
Q. Are there periodic meetings of the EKOL project members?
A. There are telephone conference calls with all

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of the resource team coordinators and the staff of the project.

Q. Are those held on a regular basis?
A. Yes.
Q. How frequently?
A. Between once and twice a month.
Q. And where is the staff of the project based?
A. Trisha is based in Sacramento, as is the policy person. Community Focus is based in San Francisco.
Q. Who is the part-time policy staff person?
A. Her name is Amanda Bohl, B-O-H-L.
Q. And are there periodic -- Are there meetings between participants in the EKOL project -- by that I mean you or Trisha or the resource team coordinators or the policy staff person -- and the Department of Health Services that pertain to the EKOL project?
A. Our HEC, the health education consultant -- I think that's what it stands for -- is not generally on those calls. However, I can think of just a recent call that he was -- that he did participate on that was specific to the survey that we just conducted.
So periodically, a representative from the health department may be on those calls. But for the most part, he would not be on the calls.
Q. And by the calls, you're referring to the conference calls between the resource team coordinators?
A. Yes.
Q. What's the name of the health education consultant you mentioned?

A. The health consultant. Greg Oliva.
Q. Is there a typical composition to one of the resource teams?
A. I would say no.
Q. What is meant by a resource team then? Not like a baseball team, I take it?
A. Well, there are players on the team, and they do come together. And they would be opinion leaders in the community, tobacco activists, representatives from the health department. Again, each resource team invites people from the community who are interested in this area to come together, and it's the resource team that develops the strategy and the presentations or the approach that will be used to educate key opinion leaders in the community.
Q. And have the resource teams been formed under the EKOL project?
A. Yes, they have.
Q. And do you have a list of the -- documents that identify the members of the teams?
A. Yes, there are.
Q. What's the range of number of members of the 15 resource teams?
MR. SIPOS: You mean like an average per team?
MR. LERNER: No.
MR. SIPOS: Or the whole?
MR. LERNER: Q. What's the range they range

from, three to eight or -- or four to 70 or --
A. I will do my best to recollect because we did

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spell that out in our proposal that was funded. And I would venture to guess that the parameters again for resource teams run from something like eight to 25.

Q. And do the parameters for the membership of the resource teams also include descriptions -- or refer to the types of leaders to be included on the team?

A. In our scope of work, we identified in broad categories who would be -- who might be included on a resource team. And those were the categories that we've already discussed.

Q. Is the American Lung Association of California the sole grantee for the EKOL project?

A. Yes, it is.

Q. And other than the local associations, that is, the 11 affiliates, are there any other subcontractors under that grant?

A. Yes, there are.

Q. Who are the other subcontractors?

A. We have a media consultant named Caitlin Kerk, C-A-I-T-L-I-N K-E-R-K.

Q. Where is Caitlin Kerk based?

A. San Jose.

Q. What are her responsibilities with respect to the EKOL project?

A. She has been involved in the development of press releases and advertisements and materials that

will be used by the resource teams for educating key opinion leaders.

Q. And are there other subcontractors?

A. There is a subcontractor whose involvement has not -- is slated for the second year of the project. So we have not used him yet. And I'm going to say the acronym for his organization is LEAN, which is Law Enforcement -- I don't know what the rest of it is. Law Enforcement -- I don't remember what the "AN" stands for. He is a consultant. We have subcontracted with him if there is a need to do specific education with law enforcement opinion leaders.

Q. What's the name of that consultant?

A. I knew you were going to ask. I can't remember. It's in the grant, though.

Q. Thank you.

Has Caitlin Kerk produced press releases?

A. Yes.

Q. And are those issued by the American Lung Association?

A. They are issued by the American Lung Association as part of the EKOL grant and identified as being funded by Prop 99.

Q. So they would have American Lung Association -- they would use American Lung Association letterhead?

A. I don't think so. But I actually am not 100 percent sure whether or not we have developed separate

letterhead for this project.

Q. How many press releases have been issued so far?

A. I don't know.

Q. Do you know approximately?

A. I don't.

Q. Do you recall the topics of any of the press

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releases? I'll ask you, are you familiar with the press release?
A. I am more familiar with the brochure that we developed on norm change strategy. I can't recollect if I actually have seen a press release.
Q. When was the first press release issued?
A. I don't know.
Q. When did Caitlin Kerk begin to work with the project?
A. July 1.
Q. You mentioned she's also developed advertisements?
A. Yes.
Q. What has been developed in that regard?
A. As a part of our grant, we budgeted money for paid advertising in journals that are specifically related -- or targeting key opinion leaders.
Q. How many advertisements have been developed?
A. Two have been developed. One was rejected by the health department as being too controversial.
Q. And with regard to the second ad, has it been

run?
A. It is about to be run.
Q. Did you play a role in developing the advertisements?
A. I played a role in reviewing and editing.
Q. Who else participated in developing the advertisements?
A. The entire staff of the project.
Q. Were there any outside people -- outside the staff other than Caitlin Kerk involved?
A. No.
Q. And with regard to the ad that was rejected by the health department, is there a name for it?
A. No. I mean, there is, but I can't remember.
And the American Lung Association of California ran that ad on our own, not as part of the EKOL project and not with funds from Prop 99.
Q. When was that ad run?
A. I will estimate about two months ago.
Q. Did the ad pertain to secondhand smoke?
A. No.
Q. Does the ad that's about to run pertain to secondhand smoke?
A. No, it does not.
Q. What's the theme of the ad that's about to run?
A. I knew you were going to ask me. I just looked at it. I cannot recall. But I know it's not

related to environmental tobacco smoke.
MR. LERNER: Off the record.
(Discussion off the record)
MR. LERNER: Back on the record.
Q. Does the grant proposal that was submitted -- I'm sorry. Does the EKOL project have any aspects that pertain to secondhand smoke?
A. No, it does not.
Q. You mentioned that the overall goal of the EKOL project is to educate key opinion leaders on the value of norm change strategies; is that correct?
A. That's correct.

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Q. Do norms -- what is meant by norm change strategies?
A. Norm change strategies refer to the policies and practices of the community that denormalize smoking, that makes smoking more difficult and less acceptable.
Q. So would it be the purpose of norm change policies to reduce smoking and thereby reduce secondhand smoke exposure?
A. Yes.
Q. Has the EKOL project identified specific norm change strategies?
A. Each of the resource teams is responsible for selecting the area that they choose -- that they will focus on.
Q. So each resource team is responsible for identifying specific norm change strategies to present

to key opinion leaders?
A. That's correct.
Q. Have any key norm change strategies been discussed at the telephone conference calls with the resource team coordinators and staff?
A. Yes, they have.
Q. What norm change strategies have been discussed in that context?
MR. SIPOS: Why is that relevant if she's already testified that none of the EKOL program pertains to secondhand smoke, which is the subject of the subpoena?
MR. LERNER: I think quite the contrary. She answered that norm training strategies are reduced -- directed to reducing smoking and thereby reducing the exposure to secondhand smoke.
MR. SIPOS: I'll let her testify about reducing smoke, but I think reduction of secondhand smoke is just a natural by-product of reducing smoking. Can you just limit your question to norm change?
MR. LERNER: I'll ask her a direct question about it.
MR. SIPOS: Yeah.
MR. LERNER: Q. Do any norm change strategies pertain in any way to secondhand smoke?
A. I find it difficult to answer that question when you say "in any way."
Q. Why?

A. Because I think it's -- as Richard suggested, there's a natural consequence that if you reduce smoking, it will reduce the exposure to secondhand smoke.
Q. Well, I'll give you an example that I've heard of in depositions in this case, which is one strategy -- or have you heard that -- I'll give an example of a media strategy calculated to induce people not to smoke by inducing guilt that their smoke from their cigarettes can cause harm to their children or loved ones or other third persons. That's what I mean by an example of a strategy.
A. I'm familiar with that strategy. That is not a strategy that has come up in the context of the resource teams. The strategies are more likely to be focused, for example, on the master settlement agreement. And that's probably been the number one

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focus for the resource teams.
Q. Has smoking cessation been one of the strategies?
A. No, it's not.
Q. And ETS has not been a specific strategy?
A. That's correct.
Q. Has ETS been -- Has exposure to ETS been discussed as a potential strategy for use with opinion leaders?
A. It has not been discussed as a potential strategy to my knowledge.

Q. Earlier, you mentioned a survey that was recently conducted. Can you tell me what that survey was?
A. Yes. And I will acknowledge that I failed to list one of the other subcontractors. We are required by the grant to have an evaluation component. And Harder & Company are evaluators for the EKOL project. H-A-R-D-E-R.
Q. Thank you.
Now, can you describe what that survey was?
A. Yes.
Q. What was it?
A. It was a telephone survey of 415 key opinion leaders.
Q. And when was that conducted?
A. It was just completed.
Q. And what was the purpose of the survey?
A. As a part of our grant, we are required to have an evaluation component. This is our baseline survey to assess the positions, opinions, knowledge of the key opinion leaders. And it will be repeated. There will be another survey at the end of the three-year grant or just before the end of the three-year grant to compare the results.
Q. And these are key opinion leaders in California?
A. Yes.
Q. Are there key opinion leaders from any other

state?
A. Specific to California.
Q. Does any aspect of the survey deal with health risks of ETS?
A. There is one question in the survey that asks key opinion leaders to prioritize what they perceive to be the most important issues related to tobacco. And there are five choices, and one of the choices is environmental tobacco smoke.
Q. And what are the other four choices?
A. I will tell you the two top choices were youth access to tobacco and health risks of tobacco.
Q. Health risks of smoking?
A. Health risks of smoking.
Q. Do you recall what the other two choices were?
A. Besides the environmental tobacco smoke, which was separated out from the health risks, there was a question on the enforcement of current policies. And of course, I told you there were five, and I'm losing what the fifth one is. But there were five.
Q. Enforcement of current policies, meaning --

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A. Tobacco control policies.
Q. So the question generally used that general language, not specific language relating to prohibitions of smoking in workplaces, for example?
A. Right.
Q. Where did --

A. May I ask Richard a question?
Q. Yeah, sure.
(Recess taken from 3:15 to 3:32 p.m.)
MR. LERNER: Q. When we took the break, we were discussing the survey. And I think there was a question pending, and you wanted to ask Mr. Sipos a question. So I'm going to ask the question be reread to see if you finished your answer.
Would you mind reading the last one?
(Record read by the reporter)
MR. LERNER: Q. Do you recall the fifth choice?
A. Tobacco advertising.
Q. Do you recall what -- Do you have any information as to what the responses of key opinion leaders was to the five choices?
A. I do.
Q. What was that?
A. The key opinion leaders ranked as serious to very serious youth access to tobacco and health risks of smoking.
Q. What was the range of responses to the question?
A. If my memory serves me correctly, there was a scale ranking from very serious, serious -- I think there was a four-point scale. And the serious to very serious received a ranking of three or more.
Q. So each key opinion leader was asked in the

survey to rank the seriousness of each of the five choices?
A. Yes.
Q. And do you recall what the response was with regard to enforcement of current policies?
A. That was perceived to be one of the least serious. There wasn't a whole lot of spread between the last three. So there was a clear demarcation of the first two as being serious to very serious, and the last three were fairly close in range.
Q. And the last three being enforcement of current policies --
A. Exposure to secondhand smoke and --
MR. SIPOS: Advertising.
THE WITNESS: -- advertising, right. That's the one.
I think -- I feel very -- I won't say any more. Advertising.
MR. LERNER: Q. And to your knowledge, is any use planned for these results -- strike that.
Is there any plan on the use of the results with regard to the seriousness of the perception of exposure to secondhand smoke in that survey?
A. As I mentioned earlier, the survey is primarily baseline so that we can evaluate for ourselves the impact of our efforts to educate key opinion leaders. I'm not certain at this time if there are any

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other -- The results of the survey will be made

available to the resource teams.
Q. Do you have any knowledge concerning the design of the survey?
A. I do have some knowledge of the design of the survey.
Q. Do you know why key opinion leaders were asked about the seriousness of the question of exposure to secondhand smoke?
A. One of the instruments that had been used by the independent evaluators for the California Department of Health Services was used as a model. Our survey was an adaptation. And while I don't recall the exact language of that earlier instrument, I know it was the basis for the questions that we posed for our survey instrument.
Q. The reason I'm asking is because you earlier testified that none of the norm change and strategies has anything to do with secondhand smoke.
A. I don't believe I said that in precisely that way. I think if I may clarify.
Q. Sure.
A. That norm change strategies which restrict smoking will invariably also restrict or reduce exposure to secondhand smoke.
Q. So is one purpose of the survey also to determine what norm change strategies to utilize?
A. Yes.
Q. Have the survey results been compiled?

A. Yes, they have.
Q. Have they been distributed?
A. No, they haven't.
Q. Is there a plan to distribute?
A. We are still in the process of determining how best to publicize the results.
Q. Was the telephone survey conducted by American Lung Association?
A. No, it was not. It was conducted by Harder & Company.
Q. Harder & Company. Where are they based?
A. San Francisco.
Q. Do you know the methodology used to select the 415 opinion leaders who were surveyed?
A. I will do my best to describe it. 415 was the number of actual respondents. Far more people were actually contacted. So the study design called for a sampling of key opinion leaders throughout the state. In compiling the list of who was to be contacted, it was a combination of input from the resource teams of their local opinion leaders as well as databases available to the public regarding who are the elected officials in any given community.
Q. For purposes of the survey, were key opinion leaders defined in the same manner as it's defined for the grant?
A. Yes, that's correct.
Q. So it would include religious leaders,

educators, so on?
A. Yes, although a disproportionate number of people included in the survey since this was not a

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random survey were elected officials.
Q. Did the survey include any other questions that pertained to the subject of the health risks of secondhand smoke?
A. The survey did not include any questions related to the health risks of environmental tobacco smoke. However, it did include questions related to policies on exposure to secondhand smoke.
Q. Apart from the questioning that you described that contained the five choices --
A. Yes.
Q. -- were there any other questions that pertained to policies relating to exposure to secondhand smoke?
A. Yes.
Q. How many other such questions were there?
A. I don't recollect. The first question I described was in the category of asking opinion leaders to identify the most serious problems. There were some questions related to policies on exposure to ETS. But I can't tell you how many exactly.
Q. Can you tell me what you recall with regard to such questions?
A. I recall a question that asked about increasing regulations or policy related to

environmental tobacco smoke in enclosed public places.
Q. Do you remember what that question was?
A. I believe the question asked the respondents to indicate their support for policies in specific areas, and that was one of the areas they could select, their degree of support.
Q. Do you recall what the response was with regard to increasing regulations on ETS in enclosed public places?
A. I do not.
Q. What other questions do you recall that pertain to policies related to ETS?
A. There was a question relating to support for restrictions on smoking in college dormitories and in condominiums or apartment buildings.
Q. Were those separate questions as to the different places?
A. Unfortunately, they were combined, which really muddied the waters.
Q. What was the response with regard to support for restrictions on smoking in college dormitories, condominiums or apartments?
A. Actually, I think condominiums was not a part of it. It was apartments.
Q. Okay.
A. In our discussion of the results, many respondents had difficulty in answering the question because they had different positions on college

dormitories versus apartment buildings.
Q. So there were narrative responses you mean?
A. There were enough narrative responses that there was an effort in subsequent -- again, it really muddies the waters in terms of analyzing the results of separating out the two because it became clear that combining them made for an ambiguous response on the part of the respondents.

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Q. So what conclusions were drawn with regard to that particular question?
A. The conclusion that was drawn was that people were more supportive of restrictions in college dormitories and less supportive of restrictions in apartment buildings.
Q. Do you recall any other questions that related to policies pertaining to ETS?
A. I do not.
Q. Were there any other aspects of the survey that dealt with ETS other than the ones you've described already?
A. No, I don't think so.
Q. How many questions were in the survey?
A. I don't know the exact number of questions. They were divided into major categories.
Q. What were those?
A. I will do my best to recollect. The first one was salience of tobacco concerns. There was an area that was on support for policies related to tobacco

control. There were a series of questions related specifically to youth. And there were questions related to the support for specific policies.
Q. Has the survey been produced in written form?
A. There is a draft of the results, yes.
Q. When do you anticipate that the results will be released?
A. Within the next month.
Q. Is there a plan as to whom to release the results?
A. I'm not aware of a developed plan as yet. I think it's in the process.
Q. Does the plan that's in process include releasing the report to the public?
A. I'm not sure.
Q. If I could turn again to the attachment to the Amended Notice of Deposition, with regard to item 3, can you tell me if there are any other surveys or evaluations of which you are aware that were performed to determine or estimate the effectiveness of efforts by the American Lung Association of California to inform or educate residents of the dangers of exposure to secondhand smoke?
A. I'm not familiar with any other evaluations or surveys.
MR. LERNER: Go off the record a moment.
(Discussion off the record)
MR. LERNER: Q. In your role as program

director, do you have responsibility for coordinating with other organizations on issues that relate to environmental tobacco smoke?
A. No.
Q. Do you work to implement any programs of the national American Lung Association that relate to environmental tobacco smoke other than the core programs you described?
A. No.
(Discussion off the record)
(Whereupon, Defendant's Exhibit 391 was marked for identification.)
(Whereupon, Defendant's Exhibit 392 A - D

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were marked for identification.)
(Whereupon, Defendant's Exhibit 393
was marked for identification.)
(Whereupon, Defendant's Exhibit 394
was marked for identification.)
MR. LERNER: Q. Ms. Charney, I have some documents that were produced by the American Lung Association of California in response to our subpoena for documents that have some pertinence to ETS. I'm going to ask you to review them and tell me if you can identify them and let me know what use has been made of them with regard to the question of methods utilized to inform or warn or educate residents concerning the dangers of ETS.
I'm showing you now Exhibit 391, which bears

the title on the first page "Health Effects of Smoking on Children." I ask if you recognize this document.
A. I don't recognize this document. It's a document that is no longer currently in use. It's when we identified ourselves as the Christmas Seal People, which we no longer do.
Q. What do you mean the Christmas Seal People?
A. That used to be part of our logo, because that's how people identified us, but we've since removed that from our logo.
Q. You mean the double cross?
A. No. The double cross is very much a part of our logo. But as you see right under here, the Christmas Seal People is no longer part of our logo.
Q. So this is not a document you've seen before?
A. No.
Q. I'm going to hand you Exhibit 392, which is a four-part exhibit consisting of what appears to be some brochures pertaining to secondhand smoke, and ask if you can identify any of those for me.
A. I don't remember what number this is, but again, this is an old one --
Q. That's 392 D?
A. 392 D.
-- replaced by this newer one, which I am familiar with, and it's produced by our national association. And that is --
MR. SIPOS: A.

THE WITNESS: -- A.
MR. LERNER: Q. Have you not seen 392 D before?
A. I have not seen 392 D before.
Q. But you have seen 392 A?
A. I have, yes.
Q. And is that a brochure that is currently used?
A. Currently used, yes.
Q. Is it distributed by the American Lung Association of California?
A. It is distributed by the local associations of the America Lung Association of California.
Q. So that would include the affiliates and the branch offices?
A. Yes.
Q. Now, is there a regular or some procedure for the distribution of this particular brochure, that is,

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392 A?
A. Generally speaking, each local association determines which pamphlets that they stock. They're ordered directly from our national office. One of the services provided by all of the local Lung Association's affiliates and branches is information and referral. So they might be sent to somebody in response to a call for information.
Q. Do you know whether this pamphlet, that is 392 A, is used as part of any direct mail campaign?

A. I am quite certain that it is not used as part of any direct mail campaigns.
Q. Are you familiar with direct mail campaigns of the American Lung Association of California?
A. Yes, I am.
Q. Do the direct mail campaigns include any materials or information pertaining to secondhand smoke?
A. They do not.
Q. In your role -- in your position as program director, are you responsible for distributing any pamphlets that pertain to ETS?
A. No, I'm not.
Q. Who within the organization has responsibility for pamphlets that pertain to secondhand smoke?
A. As I mentioned earlier, each of the local associations is responsible for the purchase of materials and their distribution, and they're ordered directly from our national office.
Q. So there is someone in the branch offices --
A. Yes.
Q. -- that has that function?
A. Yes.
Q. Do you recognize 392 B? That is the Spanish language pamphlet.
A. You know, I don't recognize this particular pamphlet. I know that we have several pamphlets in Spanish. And this again appears to be one of the older

ones. It's dated 1994, and I believe it may have been replaced.
Q. Does the American Lung Association of California presently have pamphlets that are distributed pertaining to secondhand smoke in the Spanish language?
A. The state office is not actively engaged in the distribution of pamphlets. We do have samples. So I am familiar with what is available, but we ourselves don't have a supply of pamphlets that we distribute.
Q. I understand. But your branch offices, you're saying, would have such pamphlets?
A. Yes, yes, yes.
Q. And does the supply of pamphlets -- or do the samples that you're familiar with include Spanish language pamphlets --
A. Yes.
Q. -- pertaining to ETS?
A. Yes.
MR. SIPOS: You need to let him finish his question. You were answering yes to the first part. It sounds like we had yeses across the board.
MR. LERNER: Q. I appreciate your assistance. I'm just trying to get a clear record. It

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would be easier.
Now, with regard to Exhibit 392 C, which is the pamphlet called Facts about Occupational Asthma --
A. Yes.
Q. -- is that a pamphlet that's currently

available through branches of the American Lung Association of California?
A. Yes, it is.
Q. I'm showing you Exhibit 393, which is a document called A No-Smoking Coloring Book. Have you seen this document before?
A. I have not seen this document before.
Q. To your knowledge, does the American Lung Association of California distribute any curriculum materials that would warn of the risks of secondhand smoke?
A. Could you clarify what you mean by curriculum materials?
Q. That's a good point.
Does the American Lung Association of California distribute any materials to educate children concerning the risks of secondhand smoke?
A. Yes, it does.
Q. What are those materials?
A. The American Lung Association has been involved with the American Cancer Society and the American Heart Association in the tobacco education program called the Smoke-Free Class of 2000. And materials, curriculum -- curricula were developed for each age, each grade. I believe that was starting in 1987. When it got to high school, 9th grade, the curriculum that was adapted was the TATU program that I had mentioned earlier, Teams Against Tobacco Use.

Q. Does the American Lung Association of California have something to do with -- Are the Smoke-Free Class of 2000 tobacco education materials still distributed by American Lung Association of California?
A. They're not distributed by the American Lung Association of California, but they are distributed by our national office. And I can't tell you how wide the distribution is today since, again, many of those materials were developed 12 years ago, ten years ago.
Q. Does the American Lung Association of California presently have any educational programs directed at children that relate in any way to the dangers of or risks of ETS?
A. As with nearly all of the material related to the health risks of smoking, there's a component that includes some information about the risks of environmental tobacco smoke. And since most children are not smokers themselves, that is one of the risks for them, is the exposure.
Q. What materials are presently distributed that are directed toward children that include such information?
A. I don't know, because each of the local associations -- there's not a core program for elementary school aged tobacco education.
Q. But you're aware there are some materials that are directed at children?

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A. Yes.
Q. Can you tell me what they are?
A. Our current branch has a program that's, I think, second and fourth grade curriculum.
Q. I am just going to show you a collection of documents that have not been marked and tell me if this is the Kern branch program.
A. It sure looks like it. This was done ten years ago.
I believe that this is indeed the curriculum that they have, though they had changed the video. They no longer use "Octopuff in Kumquat," which is the title of one of the videos. And I don't believe -- there's another video mentioned by name. Again, I believe they have updated the videos, but this is essentially the curriculum.
Q. So to your knowledge, the Kern curriculum has been in use for over ten years?
A. Yes.
Q. Do you know what schools the curriculum was used in?
A. Elementary schools in their territory. I have actually observed one of the lessons, site visit.
Q. In Kern County?
A. In Kern County.
Q. I'll ask the court reporter to mark the document you just identified as Exhibit 395, please.
(Whereupon, Defendant's Exhibit 395

was marked for identification.)
MR. LERNER: Q. To your knowledge, have other offices of the American Lung Association of California developed a curriculum for school children in this area?
A. There are several other associations that also have developed curricula for school-aged children.
Q. Which associations?
A. Now I'm going to do this off the top of my head. Our Sacramento association has a program called STEP, which is Seventh Grade Tobacco Education Program.
Q. Is that an affiliate, or is that a branch?
A. That's an affiliate.
I am not familiar with any curriculum that our Superior branch is implementing.
Q. Does Superior branch have a curriculum?
A. Not that I'm aware of. We're specifically talking about school-aged children.
Q. Yes.
A. Not that I am aware of. And I don't -- Again, I'm not familiar with our Redwood Empire -- they became a branch about a year and a half ago. I'm not certain whether or not they have a school-based curriculum that they're using.
Q. Are you aware of other educational materials distributed by the American Lung Association of California that concern in any respect the dangers or health effects of ETS aimed at populations other than

school-aged children?
A. Yes.
Q. What are the other such materials?
A. Our Superior branch had a Prop 99 grant to

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educate expectant parents about ETS exposure. And they developed a video which was distributed in the local hospital where most of the births occur.

Q. Was the video distributed beyond the local hospital that you know of?

A. Not to my knowledge.

Q. What was the name of the hospital?

A. I don't recall.

Q. I hand you now Exhibit 394, which is another brochure. I ask if you can identify that, please.

A. I recognize this as a publication produced by the national office. Again, I'm not 100 percent certain that this is the most recent copy of it.

MR. SIPOS: Have you seen the document before?

THE WITNESS: Yes.

MR. LERNER: Q. Does the American Lung Association of California presently have a brochure -- a more recent version of this brochure that it distributes?

A. I believe that there is a more recent copy of this brochure that is distributed.

Q. And it's a fact sheet pertaining to secondhand smoke?

A. Yes.

Q. Do you recall the title of the brochure?

A. I do not.

Q. How many brochures are presently being distributed by American Lung Association of California that have as their subject the health risks of ETS?

A. I don't know.

Q. Is there more than one?

A. Yes.

Q. I take it there's a general brochure such as Exhibit 394?

A. Yes.

Q. And there are brochures for expectant mothers?

A. Yes.

Q. And there are brochures that pertain to asthma?

A. Yes.

Q. Are there brochures that relate to the health risks of secondhand smoke that have other specific intended audiences, for example, minorities or children?

A. Our national association produces within those three areas some pamphlets that are targeting both Spanish speaking and other minority groups and/or low literacy.

Q. Are there brochures in languages other than English and Spanish?

A. Not from our national office, no.

Q. Are there such brochures in other than English and Spanish that are distributed in California by American Lung Association of California or its affiliates?

A. The majority of our affiliates and branches prefer to use materials with the American Lung Association logo. I believe that some of our associations have translated those materials into languages other than Spanish, but I don't recollect

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precisely who has done that.
Q. Have you seen translated brochures in languages other than Spanish?
A. I have seen brochures in Asian languages that are distributed by some of our affiliates. I can't say for certain that they are actually translations of Lung Association materials.
Q. Has American Lung Association of California also distributed any videos that pertain to the health risks of secondhand smoke?
A. Not that I'm aware of.
MR. LERNER: That's all I have.
EXAMINATION BY MS. FROSTROM
MS. FROSTROM: Q. Do you know how long the American Lung Association has had tobacco control programs?
A. That's a good question. In 1904, when we began, our focus was solely on tuberculosis. I believe it was sometime in the 1950s, but I can't say for

certain, when tobacco became a focus of the Lung Association.
Q. And it's been a focus consistently since then?
A. Yes, but I can't tell you for sure it was the '50s. It might have been the 1960s. But about that time, I would say.
Q. Okay. And we looked at a number of brochures already today that were published. Exhibit 391 was published in 1985; Exhibit 392 D was published in 1986; and Exhibit 392 A was published in 1998. Is there still a problem today even with all of this education since the '50s and '60s in the beliefs of the American Lung Association?
A. It is the belief of the American Lung Association that there still is a serious problem.
Q. You said that you're familiar with the materials that are available through the American Lung Association. And I also am afraid that I don't have copies, but I can take care of that when we leave. This is -- What are we up to? 39 --
MR. LERNER: We can use that. I don't have numbers for the plaintiff's exhibits.
(Whereupon, Plaintiff's Exhibit 4090 was marked for identification.)
MS. FROSTROM: Q. This is available on the American Lung Association website; is that correct?
A. That's correct.

Q. And it describes a study that was released, I guess, in January of 1996. The relevant part to my discussion is in the second page --
A. Uh-huh.
Q. -- where it describes the percentage of children who are exposed to ETS in their homes as of September of 1996, or whenever the study was performed, presumably on or around that date. To your knowledge, is that accurate information?
MR. LERNER: Objection. Vague and ambiguous. I'd like to see the statement you're referring to.
MS. FROSTROM: Certainly.
THE WITNESS: To my knowledge, it is accurate information.

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MS. FROSTROM: Q. The statement there is that 68.5 percent of children have been exposed to ETS in their homes.
MR. LERNER: Was there a pending question?
MS. FROSTROM: To her knowledge, was that true and correct information distributed by the American Lung Association. She answered yes.
Q. And in Exhibit 392 A -- do you still have access to these?
A. Yes.
Q. On the first page, top left-hand corner, it indicates that most smokers agree that smoking is hazardous to the health of nonsmokers. Do you see that statement? 392 A. It's the one that looks like this.

A. Yes.
Q. Right here.
A. Okay. Can you repeat the question?
Q. Do you see that statement?
A. Yes, I do.
Q. It says that "most smokers agree." Do you appreciate the difference between awareness and understanding in reviewing this literature?
MR. SIPOS: Objection. Vague and ambiguous.
MR. LERNER: Objection. Vague and ambiguous.
THE WITNESS: I don't.
MS. FROSTROM: Q. Okay. In saying that most smokers agree, does that mean that most smokers are aware that there may be a danger?
MR. LERNER: Objection.
MS. FROSTROM: Q. Or does it mean that most smokers may understand on a deeper level that there is a problem?
MR. LERNER: Objection. Vague, ambiguous, calls for speculation.
MS. FROSTROM: Q. You can answer if you are able.
A. I'm having difficulty answering the question because I'm not sure if you're implying that knowledge leads to behavior.
Q. That is precisely my point, if you're aware that people act in response to that.
MR. LERNER: Objection. Calls for

speculation.
MS. FROSTROM: You can still answer the question even though he objects.
THE WITNESS: It is --
MR. SIPOS: Or I object.
THE WITNESS: It is my experience that knowledge does not always lead to behavior change.
MS. FROSTROM: Q. And it's difficult to tell from this statement whether we're talking about knowledge that would lead to a behavior change or knowledge that would not?
A. I can't answer that.
Q. Can you tell by that statement what the exact meaning of "agree" is?
MR. LERNER: Objection. Calls for speculation.
THE WITNESS: Again, I would say that I interpret that to mean that most people have knowledge of the harmful effect of cigarette smoking whether or

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not they choose to smoke or not smoke.
MS. FROSTROM: Q. Does the American Lung Association believe that the behavior is related to the norm, the norm strategies that you discussed earlier?
Let me back up one and give you a more introductory question about it. You said you're trying to change the norms?
A. (Witness nods head.)
Q. What is the current norm?

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A. I believe the current norm has changed significantly, in that smoking is far less acceptable than it once was. And it's the position of the American Lung Association that norm change strategy is ultimately the most effective approach to reducing cigarette smoking.
Q. So the current norm would be --
A. Well, it depends on where you are. In California, the current norm is that approximately -- although it varies from population, but approximately 20 percent of Californians are smokers, slightly over 20 percent. We have the second lowest rate in the country, Utah being the state that has the lowest rate of smoking.
Q. Do you know what it is in Utah?
A. Pardon me?
Q. Do you know what it is in Utah?
A. It's under 20 percent, I believe, 17 to 18 percent.
Q. In attempting to change the norm, have you run across opposition?
A. Yes, we have.
Q. Where do you believe or know that that opposition comes from, if you know?
A. Can I consult with Richard?
Q. Sure.
(Whereupon, the witness and her counsel exit and reenter the deposition room.)

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MR. SIPOS: Could you read back the question?
(Record read by the reporter)
THE WITNESS: I believe, and this is my opinion, that particularly in the area of youth initiation of smoking, that one of our most significant adversaries is the tobacco industry and its efforts to target youth.
MS. FROSTROM: Q. You say that is your opinion. Are you aware of whether the American Lung Association would support you in that opinion?
MR. SIPOS: When you say American Lung, are you talking about the national or the state entity? Because this deposition is limited to the state entity, American Lung Association of California.
MS. FROSTROM: And she's indicated that in distributing the materials, they used the national materials. I think there's kind of a blurring of the line that's gone on.
MR. SIPOS: Well --
MS. FROSTROM: Their position comes from the information that they distribute. The information that they distribute comes from the national office.
MR. SIPOS: I understand that. But nonetheless, the deposition is limited to the goals of

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the state and the evaluations or surveys. So if you want to ask her about the state, go right ahead.

(Whereupon, Plaintiff's Exhibit 4091 was marked for identification.)

MS. FROSTROM: Okay. Let me shortcut this.

Q. I've got Plaintiff's Exhibit 4091. This was distributed on the state web page. Do you recognize that?

A. Yes.

Q. Could you turn to page 3?

In the middle, you'll see an articulation of various efforts taken by the tobacco industry. When you say your opinion, does that describe the opinion that you are --

MR. LERNER: Objection. Vague and ambiguous. I'd like to take a look at that, too, please.

MS. FROSTROM: Q. Some $450 million spent in advertising and initiating in smokers, keeping other smokers addicted.

A. Yes.

Q. That's the opposition that we're discussing; is that correct?

A. Yes.

MS. FROSTROM: Would you like to take a look at that?

Q. And finally, the programs that the Lung Association has in force that you've been involved in, that you've been aware of, most of those have been focused on the smoker, the smoking cessation; is that correct?

A. I would say that the American Lung Association has had a dual focus on both the individual

smoker and also on policy and norm change strategy. And I believe I said earlier in my deposition that the Lung Association has come to recognize the value of norm change strategy in terms of diminishing the number of smokers and exposure to environmental tobacco smoke.

Q. Correct.

A. But we continue to also work with individuals around the smoking cessation, both adults and teens.

Q. To work on the smoking cessation?

A. Yes.

Q. And reduction of secondhand smoke is a natural by-product of that, I believe you said?

A. Yes.

Q. But the focus is on the smoking cessation right now?

A. I don't really understand your question.

Q. When you have a smoking cessation program -- let me use one of the words you used before -- the secondhand smoke aspect of it is motivational to the smoker?

MR. SIPOS: Answer audibly.

MS. FROSTROM: Q. Is that correct?

A. When we're looking at the process of somebody quitting smoking, information about secondhand smoke is perhaps introduced in the very first session about motivation, why you might -- what would increase your motivation to stop smoking.

The actual process of smoking cessation

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doesn't involve education or risks related to environmental tobacco smoke.

Q. Okay. Thank you. That's all.

FURTHER EXAMINATION BY MR. LERNER

MR. LERNER: Q. If I could refer you to Plaintiff's Exhibit 4091, which is the excerpt from the website of the American Lung Association of California, that website is called www.californialung.org?

A. That's correct.

Q. And this excerpt is a position -- correct me if I'm wrong -- is a position statement of the American Lung Association of California opposing the settlement -- the master settlement agreement; is that correct?

A. It is not opposing the master settlement agreement. It is providing some guidelines about how the moneys -- recommendations for how the moneys should be spent. So it includes -- as I think you know, the master settlement agreement does not include guidelines for how the money is spent.

Q. Did the American Lung Association of California take any action to oppose the master settlement agreement?

A. I can't answer that question. Paul Knepprath would be the appropriate person.

Q. The paragraph to which counsel directed your attention -- correct me if I'm wrong -- to which you earlier answered about, I'd like to read into the record

to clearly understand what it was.

It is the second full paragraph under section B 1, beginning with, "Despite the settlement agreement." Okay. So I'll just read this into the record:

"Despite the settlement agreement, the tobacco industry can be expected to employ significant resources to recruit new smokers and to retain those already addicted. Every year the tobacco industry spends approximately $450 million on advertising, marketing and promotion, and between 1993 and 1996 the industry outspent the state's anti-tobacco media advertising campaign by a ratio of ten to one."

Do you know when those statements were written?

A. This policy statement was written in the last six months.

Q. So was it written before the adoption of the -- before Judge Preger approved the master settlement agreement for California?

A. No. It was written after the approval.

Q. Do you know who participated in drafting this statement?

A. The statement -- the policy statement was drafted with our government relations committee. As I recall, the process began with input from our Tobacco Control Advisory Group, and then it went to our government relations committee.

Q. The Tobacco Control Advisory Group is part of

the American Lung Association of California?

A. It's an advisory group of volunteers with expertise in tobacco that we work with to advise us on both programmatic and policy issues.

Q. And is the tobacco control -- I'm sorry. Is

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the government relations committee a committee of the American Lung Association of California?
A. It is.
Q. Who are the members of the government relations committee?
A. It includes both staff and volunteers.
Q. What staff members are on the committee?
A. It's staffed by Paul Knepprath.
Q. Any other staff?
A. Bonnie Holmes-Gen. That's H-O-L-M-E-S--G-E-N.
Q. And was Anthony Najera a former member?
A. Anthony Najera --
Q. Thank you.
A. -- was on that committee.
Q. Who is the chair of the advisory group?
A. The tobacco --
Q. -- control advisory group?
A. -- advisory group. The chair of the advisory group -- he is a board member, and I'm blanking on who that is this year. It changes.
Q. Is there any staff on the advisory group?
A. There are staff on the advisory group,

including myself.
Q. What other staff is on the advisory group?
A. Again, that changes from year to year, but affiliate staff with an expertise in tobacco.
Q. Is Paul Knepprath on the advisory group?
A. Yes, he is.
Q. And is the Tobacco Control Advisory Group a group whose purpose pertains to tobacco control advocacy?
A. No. It's not limited to advocacy. It serves in an advisory capacity for both program and policy.
Q. Does it have meetings?
A. It has telephone conference calls.
Q. Are they held on a regular basis?
A. Generally twice a year.
Q. And has the subject of secondhand smoke come up on the conference calls that you've attended?
A. I don't recall that environmental tobacco smoke has come up.
Q. Would it be fair to say -- Would it be fair to say that the American Lung Association is a strong advocate of tobacco control?
A. Yes, it would be fair to say that.
Q. And would it be fair to say that American Lung Association of California has been a strong advocate of tobacco control for more years than you've been with the organization?
A. Yes, indeed.

Q. Since the mid '80s at least?
A. Yes.
Q. Would it be fair to say that the American Lung Association has been a strong advocate of smoke-free workplaces?
A. Yes, it has.
Q. And would it be fair to say that the American Lung Association has also been over the years a strong advocate of a smoke-free environment in general?
A. Yes.

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Q. That's all I have. Thanks.
THE REPORTER: Mr. Sipos, do you want a copy of the transcript?
MR. SIPOS: No.
MS. FROSTROM: Could you please forward a transcript to the Offices of Thorsnes Bartolotta & McGuire with a rough ASCII, you said, tomorrow?
THE REPORTER: Yes.
(Deposition was adjourned at 5:02 p.m.)
--oOo--
I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, California, this____ day of_____, 2000.

_____
HARRIET CHARNEY

CERTIFICATE OF REPORTER

I, CLARE MACY, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;
That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;
I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: _____, 2000.

_____
CLARE MACY, CSR 5256

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